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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SMITH BRADFORD RENERICK,

CASE NO. 14CV1238 BEN (JLB)

Petitioner.

ORDER FINDING THE COURT LACKS JURISDICTION AND TRANSFERRING CASE

ERIC H. HOLDER, Attorney General,
et al.,

Respondents.

17 Petitioner Smith Bradford Renerick has filed a Petition under 28 U.S.C. § 2241
18 challenging a final order of removal and a motion to stay his removal while he
19 challenges the final order of removal. (Docket Nos. 1, 3.) The United States has filed
20 a Return to the Petition. (Docket No. 7.) Petitioner did not file a traverse. Because
21 this Court lacks jurisdiction to consider Petitioner’s challenge to the final order of
22 removal and it appears transfer would serve the interest of justice, the case is
23 transferred to the United States Court of Appeals for the Ninth Circuit.

BACKGROUND

25 Petitioner, a native and citizen of Belize, was removed to Belize on March 5,
26 2004 following a decision by an Immigration Judge (“IJ”) that was affirmed by the
27 Board of Immigration Appeals (“BIA”). He had been charged with removability as a
28 lawful permanent resident convicted of a firearm offense.

1 Petitioner re-entered the United States very shortly thereafter on July 4, 2005.
2 He was taken into custody by Immigration Customs Enforcement on November 26,
3 2013 and processed for reinstatement of removal pursuant to 8 U.S.C. § 1231(a)(5).
4 Section 1231(a)(5) provides for reinstatement of a prior order of removal when “an
5 alien has reentered the United States illegally after having been removed.”

6 Petitioner sought to prevent his removal under 8 U.S.C. § 1231(b)(3) and 8
7 C.F.R. § 1208.31. Section 1231(b)(3) provides that an alien may not removed “to a
8 country if the Attorney General decides that the alien’s life or freedom would be
9 threatened in that country because of the alien’s race, religion, nationality, membership
10 in a particular social group, or political opinion” and § 1208.31 outlines the reasonable
11 fear determination process. Petitioner claimed that he feared returning to Belize
12 because he believed he would be killed by a gang and that the gang was targeting him
13 because of his close friendship with an individual who killed the gang’s leader.

14 Petitioner received a credible fear interview before U.S. Citizenship and
15 Immigration Services (“USCIS”). USCIS found Petitioner had not established a
16 reasonable fear of persecution because the harm he feared was not based on one or
17 more of the five grounds for asylum (race, religion, nationality, political opinion, or
18 membership in a particular group) nor would the harm be at the instigation or with the
19 consent of a public official. Petitioner requested and received review of the decision
20 by an IJ. The IJ heard testimony, found Petitioner had not established a reasonable fear
21 he would be persecuted based on any of the categories previously noted or a reasonable
22 possibility he would be tortured if removed to Belize, and concurred in USCIS’s
23 reasonable fear determination.

24 The IJ’s April 30, 2014 order indicates it is a final order of removal and that no
25 administrative appeal is available. Petitioner filed the instant Petition on May 16, 2014
26 challenging the IJ’s final order of removal. The Government has obtained a travel
27 document to remove Petitioner to Belize.

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DISCUSSION

I. Jurisdiction

Judicial review of removal orders is governed by 8 U.S.C. § 1252, as amended by the REAL ID Act of 2005. Under the REAL ID Act, any challenge to Petitioner's removal order must be directed to the applicable courts of appeals.

Notwithstanding any other provision of law (statutory or nonstatutory), including *section 2241 of Title 28*, [. . .] *a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal* entered or issued under any provision of this chapter, except as provided in subsection (e) of this section. For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to *section 2241 of Title 28*.

11 8 U.S.C. § 1252(a)(5) (emphasis added); *see also Puri v. Gonzales*, 464 F.3d 1038,
12 1041 (9th Cir. 2006) (“The REAL ID Act . . . eliminated district court habeas corpus
13 jurisdiction over orders of removal and vested jurisdiction to review such orders
14 exclusively in the courts of appeal.”).

15 “Post-REAL ID Act cases considering the applicability of § 1252 have
16 distinguished between challenges to orders of removal and challenges that arise
17 independently.” *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007). However,
18 even when a challenge arises independently, the district court lacks jurisdiction over
19 any challenge that “is wholly intertwined with the merits of [the] removal order.”
20 *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (holding that the petitioner’s
21 habeas petition did nothing more than attack the immigration judge’s removal order
22 and was wholly intertwined with the merits of his removal order).

23 Here, Petitioner directly challenges the IJ’s decision that he is not entitled to
24 relief and the reinstatement of the order of removal. There is no independent
25 challenge, rather, it is a challenge to a final order of removal. The IJ’s decision is
26 the final order of removal because under § 1208.31(g)(1) “[i]f the immigration
27 judge concurs with the asylum officer’s determination that the alien does not have a
28 reasonable fear of persecution or torture, the case shall be returned to the Service for

1 removal of the alien. No appeal shall lie from the immigration judge's decision."

2 This is a challenge to the final order of removal that this Court does not have
 3 jurisdiction to consider.

4 **II. Transfer**

5 The Government notes in its Return that if the Court finds it lacks
 6 jurisdiction, the case may be transferred to the Ninth Circuit under 28 U.S.C. §
 7 1631. Section 1631 provides that when the "court finds that there is want of
 8 jurisdiction, the court shall, if it is in the interest of justice, transfer such action or
 9 appeal to any other such court in which the action or appeal could have been
 10 brought at the time it was filed or noticed, and the action or appeal shall proceed as
 11 if it had been filed in or noticed for the court to which it is transferred on the date
 12 upon which it was actually filed in or noticed for the court from which it is
 13 transferred." Transfer is appropriate if: (1) this Court lacks jurisdiction; (2) this
 14 action could have been brought in the Ninth Circuit at the time it was filed; and (3)
 15 transfer would be in the interest of justice.

16 This Court lacks jurisdiction over Petitioner's challenge to the final order of
 17 removal. It also appears, based on the record before the Court, that this action could
 18 have been filed in the Ninth Circuit at the time it was filed in this Court. As noted
 19 above, under § 1252(a)(5) "an appropriate court of appeals . . . shall be the sole and
 20 exclusive means for judicial review of an order of removal" and the Petition was
 21 "filed not later than 30 days after the date of the final order of removal." §
 22 1252(b)(1). Finally, "normally transfer will be in the interest of justice because
 23 normally dismissal of an action that could be brought elsewhere is time-consuming
 24 and justice-defeating." *Baeta v. Sonchik*, 273 F.3d 1261, 1264 (9th Cir. 2001).
 25 Accordingly, the Court transfers this action to the Ninth Circuit.¹

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 28 ¹In reaching this conclusion, the Court expresses no opinion on the merits of the
 Petition.

CONCLUSION

2 This Court lacks jurisdiction to consider Petitioner's challenge to the final order
3 of removal. The matter is **TRANSFERRED** to the United States Court of Appeals for
4 the Ninth Circuit pursuant to 28 U.S.C. § 1631.

IT IS SO ORDERED.

7 | DATED: October 24, 2014

Hon. Roger T. Benitez
United States District Judge